

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

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IN RE: JOINT PETITION OF TEC)
COMPANIES AND THE CONSUMER)
ADVOCATE DIVISION FOR APPROVAL)
OF EARNINGS REVIEW SETTLEMENT)
)
)

EXECUTIVE SECRETARY

DOCKET NO. 99-00995

CONSUMER ADVOCATE DIVISION'S MOTION FOR SUMMARY JUDGMENT
DISMISSING AT&T'S COMPLAINT AGAINST TEC'S PROPOSED RATE DESIGN
BECAUSE AT&T'S PROPOSED DESIGN IS NOT IN THE PUBLIC INTEREST OR, IN THE
ALTERNATIVE, FOR TRANSFER TO THE ACCESS CHARGE REFORM DOCKET

Comes the Consumer Advocate Division of the Office of Attorney General, and hereby moves for summary judgment dismissing the complaint of AT&T Communications of the South Central States, Inc. ("AT&T") as set forth in its Petition for Intervention filed January 14, 2000, in the case of the proposed settlement agreed to by TEC and the Consumer Advocate Division. In its Petition for Intervention, AT&T opposes the proposed settlement and states that it is seeking to force the TEC companies to adopt a rate design that would benefit AT&T by reducing the "access charges" paid by AT&T to TEC. As will be shown below, the proposed settlement is in the public interest of both TEC consumers and Tennessee consumers, while the AT&T proposal is not.

The Consumer Advocate moves for summary judgment against the complaint as set forth in the Petition for Intervention of AT&T on the following grounds:

1. There is no dispute of material fact, as stated in the Affidavit of R. Terry Buckner attached as **Exhibit A**, that AT&T's proposed rate design benefits only AT&T and is

not in the public interest of TEC consumers or Tennessee consumers. Accordingly, AT&T's proposed rate design is not "just and reasonable" as required under Tennessee law and is not in the public interest and should be dismissed.

In particular, the following statements of R. Terry Buckner of the Consumer Advocate Division establish that there is no dispute of the following material facts:

1. AT&T is not the only company paying access charges to TEC. BellSouth Telecommunications, Inc. ("BellSouth") paid approximately \$3.6 million in intraLATA access and billing and collection charges to TEC in 1998 and TEC received \$307,375 in interLATA access charge revenues for the year 1998 from AT&T and other companies.
2. If TEC's access charges were reduced 50% and AT&T flowed-through the reduction to its customers in Tennessee, the benefit would be only .16% off their interLATA long distance bill. To put this in perspective, for an AT&T customer to receive a one cent (\$.01") benefit, the customer would have to make \$6.25 in interLATA long distance calls. To receive a \$1.00 benefit, the customer would have to make \$625 in interLATA long distance calls.
3. Under the TEC companies' Dialing Parity plans, access charges for interLATA and intraLATA long distance calls are the same. As a result of this equalization, the amount paid by BellSouth to the TEC companies for originating and terminating intraLATA long distance calls was reduced approximately \$646,000 annually. BellSouth did not voluntarily reduce

rates and the TRA did not order BellSouth to reduce rates to flow-through these savings to Tennessee customers.

4. If the TEC companies' access rates are reduced, as proposed by AT&T, there will be a much greater reduction in the amount billed to BellSouth and other non-parties for the origination and termination of intraLATA long distance calls. Based on the experience with the reduction that occurred when the Dialing Parity plans were adopted, there is no assurance that BellSouth or other non-parties to this proceeding will voluntarily or be required to flow-through any intraLATA access charge reduction to Tennessee customers.
5. Under current rates, the TEC companies will collect approximately \$376,000 annually from AT&T and other carriers for interLATA access charges. If the interLATA access charges paid to TEC by AT&T were reduced by 50%, the impact would be a reduction in AT&T's cost of approximately \$188,000 and a forfeiture of nearly \$1,000,000 of TEC's annual over-earnings to BellSouth and other non-parties. Consequently, the \$1,000,000 of the reduction in the TEC companies' over-earnings would not benefit TEC's customers and would not immediately, if ever, benefit other consumers or the public interest.

Affidavit of R. Terry Buckner attached as **Exhibit A**, at Paragraphs 10-14.

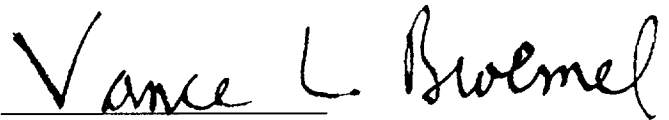
2. AT&T's claims are barred on the ground of unclean hands because even though AT&T has alleged that TEC's access rates are not "just and reasonable," there is no

proof in the record that AT&T's own rates are just and reasonable. Unless and until AT&T can demonstrate to the TRA that its own rates are just and reasonable it should not be heard in its complaint that TEC's rates are not just and reasonable.

In the alternative, if AT&T's access charge claim is not dismissed, it should be transferred to the Access Charge Reform Docket, No. 97-00889, in which certain issues are now being considered in the Universal Service Docket, No. 97-00888. From AT&T's complaint it is clear that AT&T's purpose in intervening is to reduce the access charges it pays to TEC. This access charge issue, however, would be better handled in a case where all access charges, not just those involving one company, are at issue.

This Motion is supported by an accompanying Memorandum and incorporated herein.

Respectfully submitted,



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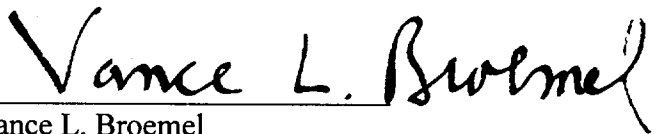
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment has been faxed and or mailed postage prepaid to the parties listed below this 7th day of March, 2000.

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Vance L. Broemel

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: JOINT PETITION OF TEC)
COMPANIES AND THE CONSUMER)
ADVOCATE DIVISION FOR) DOCKET NO. 99-00995
APPROVAL OF EARNINGS REVIEW)
SETTLEMENT)

AFFIDAVIT

Comes the Affiant, R. Terry Buckner, after being duly sworn who deposes and says:

1. That I am a Certified Public Accountant and Senior Regulatory Analyst of the Consumer Advocate Division Staff ("CA") in the office of the Attorney General and Reporter for the State of Tennessee.
2. I have reviewed and am familiar with the earnings settlement agreement by the Telephone Electronics Corporation ("TEC") subsidiaries of Crockett Telephone Company, Inc., Peoples Telephone Company, Inc., and West Tennessee Telephone Company, Inc., which was approved by the TRA in an Order dated April 1, 1997 in Docket No. 96-00774.
3. The objective of the TEC settlement referred to above was to reduce TEC earnings to a just and reasonable return of 11.47% and to provide more efficient telephone services primarily through digital technology by the end of 1998. This motive is consistent with the public interest as stated in TCA §65-4-123 to assure advanced telecommunications.
4. TEC's Form 3.01 Reports reflect earnings for 1998 for the individual companies and combined in excess of the stipulated rate of return of 11.47%.
5. The Consumer Advocate Division met with TEC in order to negotiate and develop a plan to reduce TEC's excess earnings above the 11.47% rate of return. I personally participated in these negotiations. In developing this plan, the Consumer Advocate Division was always mindful of the need to uphold and protect the interests of TEC customers and the public interest.

6. The negotiations between TEC and the Consumer Advocate Division led to the filing of a Proposed Settlement between TEC and the Consumer Advocate Division at the TRA on January 12, 2000. I am personally familiar with the matters set forth in the proposed settlement. The Proposed Settlement reduces the 11.47% rate of return to 9.909%.
7. Prior to the filing of the Proposed Settlement, AT&T filed a Petition for the Convening of a Contested Case Concerning the Regulation of the TEC Companies, December 10, 1999, in which AT&T alleged the single issue that TEC's access rates were not just and reasonable:

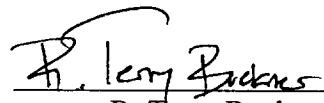
26. The existing and proposed access charges of the TEC Companies are not just and reasonable, but are greatly in excess of the cost of providing such services and are not necessary or appropriate for any purposes but merely constitute a subsidy to TEC.

Petition for the Convening of a Contested Case at Paragraph 26 (consolidated with Docket 99-00995 on February 1, 2000).

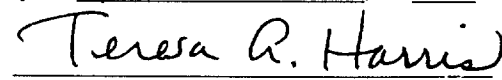
8. In addition, on January 14, 2000, AT&T filed a Petition for Intervention with regard to the Proposed Settlement. There is, however, no dispute of material fact that the revenues generated by the interLATA access charge rates and the rates for other services are required to allow TEC to recover its total cost of service and that in the absence of such revenues, increases in other rates would be required.
9. From my review of the AT&T Petition for Intervention and the AT&T Petition for the Convening of a Contested Case, it is the intention of AT&T to seek a reduction of the access charges it pays to TEC. Their petition, however, does not provide any evidence that TEC's interLATA access charges are "greatly in excess of the cost of providing such services."
10. AT&T is not the only company paying access charges to TEC. BellSouth Telecommunications, Inc. ("BellSouth") paid approximately \$3.6 million in intraLATA access and billing and collection charges to TEC in 1998 and TEC received \$307,375 in interLATA access charge revenues for the year 1998 from AT&T and other companies.
11. If TEC's access charges were reduced 50% and AT&T flowed-through the reduction to its customers in Tennessee, the benefit would be only .16% off their interLATA long distance bill. To put this in perspective, for an AT&T customer to receive a one cent (\$.01") benefit, the customer would have to make \$6.25 in interLATA long distance calls. To receive a \$1.00 benefit, the customer would have to make \$625 in interLATA long distance calls.

12. Under the TEC companies' Dialing Parity plans, access charges for interLATA and intraLATA long distance calls are the same. As a result of this equalization, the amount paid by BellSouth to the TEC companies for originating and terminating intraLATA long distance calls was reduced approximately \$646,000 annually. BellSouth did not voluntarily reduce rates and the TRA did not order BellSouth to reduce rates to flow-through these savings to Tennessee customers.
13. If the TEC companies' access rates are reduced, as proposed by AT&T, there will be a much greater reduction in the amount billed to BellSouth and other non-parties for the origination and termination of intraLATA long distance calls. Based on the experience with the reduction that occurred when the Dialing Parity plans were adopted, there is no assurance that BellSouth or other non-parties to this proceeding will voluntarily or be required to flow-through any intraLATA access charge reduction to Tennessee customers.
14. Under current rates, the TEC companies will collect approximately \$376,000 annually from AT&T and other carriers for interLATA access charges. If the interLATA access charges paid to TEC by AT&T were reduced by 50%, the impact would be a reduction in AT&T's cost of approximately \$188,000 and a forfeiture of nearly \$1,000,000 of TEC's annual over-earnings to BellSouth and other non-parties. Consequently, the \$1,000,000 of the reduction in the TEC companies' over-earnings would not benefit TEC's customers and would not immediately, if ever, benefit other consumers or the public interest.
15. As a senior Regulatory Analyst at the Consumer Advocate Division, the entity with a statutory duty to represent the interest of the consumers of Tennessee, it is my opinion that the reduction of access charges to AT&T would not be in the best interests of Tennessee consumers primarily because of the minuscule amount of money returned to TEC customers.

Further the Affiant sayeth not.


R. Terry Buckner

Subscribed and sworn before me this the 7th day of March, ~~19~~²⁰⁰⁰.


Notary Public

My commission expires on the 25th day of January, ~~19~~²⁰⁰³.

REC'D TN
BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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May 25, 1999

IN RE:

OFFICE OF THE
EXECUTIVE SECRETARY

PETITION OF AT&T COMMUNICATIONS OF)
THE SOUTH CENTRAL STATES, INC. FOR THE)
CONVENING OF A GENERIC CONTESTED CASE) DOCKET NO. 97-00889
FOR THE PURPOSE OF ACCESS CHARGE)
REFORM)

ORDER

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") during the regularly scheduled Authority Conference held on March 24, 1998, for a decision on four (4) threshold issues.

On February 3, 1998, Director Sara Kyle convened a Pre-Hearing Conference for the purposes of determining the issues to be addressed in this docket and establishing a procedural schedule for the filing of discovery, pre-filed testimony and legal memoranda. As a result of that Pre-Hearing Conference, the parties identified fifteen (15) issues¹ as being relevant to this proceeding, with four (4) issues constituting threshold matters to be decided by the Authority prior to the continuation of this proceeding. The issues raised as threshold matters include the appropriate course for proceeding in this docket and whether certain access charge rate issues raised by the parties should be considered in Docket No. 97-00888, (the "Universal Service Docket").

The four (4) threshold issues from among the list of fifteen are as follows:

Issue No. 2. If access rates are reduced, is it appropriate to do so in this proceeding or during the one time rate rebalancing phase in the

¹ Exhibit A to the Hearing Officer's Report and Recommendation entered in this matter contains a list of fourteen (14) issues that originated from the parties. The Authority added a fifteenth issue to the list during the Authority Conference held on February 17, 1998.

Universal Service Docket as required by Tenn. Code Ann. § 65-5-207(c)?

- Issue No. 12. Does the TRA have the authority to require a company under price regulation to change its access rate structure?
- Issue No. 13. Determine the effects that BellSouth's pending access rate reductions mandated by the court settlement with MCI and Sprint will have on any access charge restructuring.
- Issue No. 14. Will changes in access reform necessitate changes in state laws or TRA rules? If so, please be specific.

At the Pre-Hearing Conference held on February 3, 1998, the parties agreed to a schedule for the filing of briefs on the threshold issues. Having considered the briefs of the parties and other relevant portions of the record, the Authority makes the following findings and conclusions with respect to the four (4) threshold issues:

Issue No. 2. If access rates are reduced, is it appropriate to do so in this proceeding or during the one time rate rebalancing phase in the Universal Service Docket as required by Tenn. Code Ann. § 65-5-207(c)?

If access rates are reduced, it is appropriate to do so in the one time rate rebalancing phase of the Universal Service Docket (Phase III). Tenn. Code. Ann. § 65-5-207 requires that the Authority consider access charges as part of universal service. Tenn. Code. Ann. § 65-5-207(c)(8)(iii) states that, at a minimum, the Authority must consider intrastate access rates and the appropriateness of such rates as a significant source of universal service support. It does not, however, dictate whether this should be done in developing the universal support mechanism or during rate re-balancing. In Phase II of the Universal Service Docket, the Authority identified the amount of the universal service subsidy, while the purpose of rate rebalancing in Phase III is to identify rate adjustments needed as a result of the support mechanism created in Phases I and II. To facilitate the orderly handling of access charges, the Authority concludes that access charge adjustments should be considered in Phase III of the Universal Service Docket, along with all other potential sources of the universal service subsidy.

Issue No. 12. Does the TRA have the authority to require a company under price regulation to change its access rate structure?

The TRA has the authority to change the access rate structure for price regulated companies, pursuant to Tenn. Code Ann. § 65-5-207(c). Such change in access rate structure will occur during Phase III of the Universal Service Docket. Also, Tenn. Code Ann. § 65-5-208(c) and (d) provide the TRA with the authority to change access rates for price regulated companies.² Tenn. Code Ann. § 65-5-208(c) applies to both price regulated and rate of return regulated companies and states that “[t]he authority shall, as appropriate, also adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.” If the Authority determines that the access charges of an incumbent local exchange carrier violate Tenn. Code Ann. § 65-5-208(c), the Authority may order the necessary rate adjustments.

The parties dispute whether the TRA can order rate adjustments under Tenn. Code Ann. § 65-5-208(c) if such rate adjustments have a negative financial impact on the incumbent local exchange carrier. Tenn. Code Ann. § 65-5-209(b), under the section titled Price Regulation Plan, states:

An incumbent local exchange telephone company shall, upon approval of its application under subsection (c), be empowered to, and shall charge and collect only such rates that are less than or equal to the maximum permitted by this section and subject to the safeguards in Tenn. Code Ann. § 65-5-208(c) and (d) and the non-discriminatory provisions of this title.

² Chairman Greer relied upon Tenn. Code Ann. §§ 65-5-207(c), 65-5-208(c) and 65-5-208(d) in so concluding. Director Kyle noted, “We’re not talking about lowering rates; we’re just talking about changing the rate structure. And I believe that we do have the authority to do that.” Director Malone did not rely upon 65-5-208(d), but did agree that the TRA had the authority to require a company under price cap regulation to change its access rate structure.

No mention is made that adjustments made to the maximum rates pursuant to Tenn. Code Ann. § 65-5-208(c) must be revenue neutral, i.e., not have a financial impact on the incumbent local exchange carrier.

Since the Authority is required to consider access charges as part of the Universal Service Docket, and the resulting Authority decision in Phase III of the Universal Service Docket may resolve some of the outstanding issues presented in this proceeding, the Authority concludes that the Authority's consideration of the access charge reform issues raised in this proceeding should be delayed until after a decision is rendered in Phase III of the Universal Service Docket. If the parties still have unresolved issues after the conclusion of the Universal Service Docket, the Authority can schedule further proceedings, as necessary, to identify and address such issues.

Issue No. 13. Determine the effects that BellSouth's pending access rate reductions mandated by the court settlement with MCI and Sprint will have on any access charge restructuring.

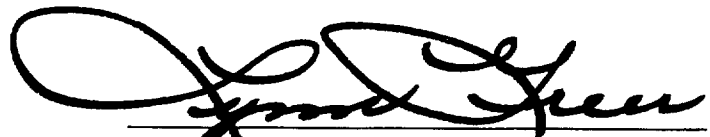
The parties have presented no evidence to suggest that BellSouth's pending access rate reductions mandated by the court settlement with MCI and Sprint will affect access charge restructuring. Thus, the Authority concludes that the court settlement and the restructuring of access charges should be treated as mutually exclusive events.


Issue No. 14. Will changes in access reform necessitate changes in either state laws or TRA rules? If so, please be specific.

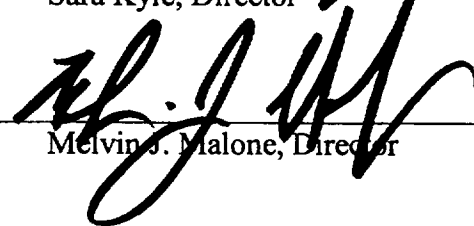
The Authority finds that changes in Tennessee laws or TRA rules are not necessary in order to proceed with this access charge reform proceeding.

IT IS THEREFORE ORDERED THAT:


1. This proceeding shall be conducted in accordance with the foregoing findings and conclusions as to the four (4) threshold issues. The reduction of access rates, if such occurs, will take place in the one time rate rebalancing phase of Docket No. 97-00888 (Universal Service Phase III).
2. Any Party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.


F. Lynn, Greer, Jr., Chairman


Sara Kyle, Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary